

REMARKS

Favorable reconsideration of this application, in view of the present amendments and in light of the following discussion, is respectfully requested.

Claims 1-37 are pending, and amended to address cosmetic matters of form. No new matter is introduced.

In the outstanding Office Action, the Abstract was objected to as containing informalities; Claims 3-4, 6-7, 10, 12-13, 21, 23-28, 31-33, 35-37 were also objected to for containing informalities; Claims 1-33 were rejected under 35 U.S.C. § 101; Claims 8-9, 12-13, 20-24 and 29 were rejected under 35 U.S.C. § 112, second paragraph; Claims 1-2, 10, 14-16, 19, 26 and 32-34 were rejected under 35 U.S.C. § 102(b) as being anticipated by Logston et al. (PCT International Publication No. WO 01/77815 A2, hereafter Logston); Claims 3-9 and 11-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of Piskiel et al. (PCT International Publication No. WO 97/46939, hereafter "Piskiel"); Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of Hutcheson et al. (U.S. Patent No. 6,947,761, hereafter "Hutcheson"); Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of Suarez (U.S. Patent No. 5,790,789, hereafter "Suarez"); Claims 20-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of De Mendonca et al. (U.S. Patent Application Publication No. 2004/0172453, hereafter "De Mendonca"); Claims 27-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of Guruprasad (U.S. Patent No. 6,802,068, hereafter "Guruprasad"); Claim 30 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of Podgorny et al. (U.S. Patent No. 6,078,948, hereafter "Podgorny"); Claim 31 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of Vange et al. (U.S. Patent No. 7,020,783, hereafter

“Vange”); and Claims 35-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logston in view of Piskiel, Hutcheson, Suarez, De Mendonca, Guruprasad, and Vange.

Initially, Applicants note that the Abstract is amended to cure the informalities identified in the outstanding Office Action, and therefore it is respectfully requested that the objection to the specification be withdrawn.

Further, the informalities identified by the outstanding Office Action in Claims 3-4, 6-7, 10, 12-13, 21, 23-28, 31-33, and 35-37 have been addressed by way of the present amendment. Therefore, it is respectfully requested that the objection to these claims be withdrawn.

With respect to the rejection of amended Claim 1, together with its corresponding dependent claims, as being directed to non-statutory subject matter, amended Claim 1 is a system claim including such features as a terminal, a server, an electronic memory, and a processor. Moreover, it is noted that computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed **as part of an otherwise statutory manufacture or machine**. In such a case, the claims **remain statutory irrespective of the fact that a computer program is included in the claim.**¹

Therefore, it is submitted that amended Claim 1, together with its corresponding dependent claims, complies with the requirements of 35 U.S.C. § 101. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. § 101 of amended Claims 1-33 be withdrawn.

Furthermore, amended Claims 8, 9, 12-13, 20-24 and 29 are amended to comply with the requirements of 35 U.S.C. § 112, second paragraph. Therefore, it is respectfully requested that the rejection of Claims 8-9, 12-13, 20-24, and 29 under 35 U.S.C. § 112, second paragraph, be withdrawn.

¹ See Interim Guidelines for Examination of Patent Application for Patent Subject Matter Eligibility, USPTO 2005 (Annex IV, Computer Related Non-Statutory Subject Matter) page 53.

Regarding the rejection of amended Claims 1-2, 10, 14-16, 19, 26 and 32-34 as being anticipated by Logston, Claim 1 is amended to recite a data access, replication or communication system including:

a terminal including an electronic memory storing a terminal-side executable and a processor provided to execute the terminal-side executable *to enable communication therewith independent of a session-based protocol*; and
a server including an electronic memory storing a server-side executable and a processor provided to execute the server-side executable *to enable communication therewith independent of a session-based protocol*,
wherein, the terminal-side executable and the server-side executable exchange messages using a message queuing system over a network and cooperatively function as a client of a second server. (Emphasis added).

Logston describes a method and apparatus for deriving and characterizing the resource capabilities of client devices in a distributed application network environment. Logston also describes that a distributed application is a computer program that is broken into multiple components, such as a Distributed Application Client Portion (DACP) and a Distributed Application Server Portion (DASP),² and whose components communicate with each other via a network.³ However, Logston does not describe enabling communication over the network *independent of a session-based protocol*, as recited in amended Claim 1. Instead, Logston describes using messaging such as User Datagram Protocol (UDP), and adding robustness by including *a session number*, a transaction sequence number and the time that the message was sent.⁴ As such, Logston relies on a session-based protocol to increase robustness by partly identifying each message using the session number of the session in which the message was transmitted. Therefore, Logston fails to disclose the claimed terminal-side executable and the claimed server-side executable, that both enable communication therewith *independent of a session-based protocol*. Accordingly, it is

² Logston at page 1, lines 30-35.

³ Logston at page 10, lines 13-35.

⁴ Logston at page 15, lines 15-25.

submitted that amended Claim 1, together with its corresponding dependent claims, are in condition for allowance.

Though of a different statutory class than amended Claim 1, amended Claim 34 recites substantially the same features, and is therefore in condition for allowance for substantially the same reasons. Accordingly, it is respectfully requested that the rejection of amended Claims 1-2, 10, 14-16, 19, 26 and 32-34 under 35 U.S.C. § 102(b) be withdrawn.

Moreover, none of the remaining cited references describe the claimed terminal-side executable or the claimed server-side executable, which both enable communication *independent of a session-based protocol*, and, thus, do not cure the above-identified deficiencies in Logston. More specifically, Piskiel fails to cure Logston with respect to amended Claims 3-9 and 11-13; Hutcheson fails to cure Logston with respect to amended Claim 17; Suarez fails to cure Logston with respect to amended Claim 18; De Mendonca fails to cure Logston with respect to amended Claims 20-25; Guruprasad fails to cure Logston with respect to amended Claims 27-29; Podgorny fails to cure Logston with respect to amended Claim 30; Vange fails to cure Logston with respect to amended Claim 31; and the combination of Piskiel, Hutcheson, Suarez, De Mendonca, Guruprasad, and Vange fails to cure Logston with respect to amended Claims 35-37. Therefore, it is submitted that amended Claims 3-9, 11-13, 17-18, 20-25, 27-29, 30-31 and 35-37 are in condition for allowance, and it is respectfully requested that the rejection of amended Claims 3-9, 11-13, 17-18, 20-25, 27-29, 30-31 and 35-37 under 35 U.S.C. § 103(a) be withdrawn.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-37, as amended, is earnestly solicited.


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